THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P. NO.14457 OF 1996

BETWEEN:

S.V.Ramagopal son of S.V.S.Acharya

…petitioner

Vs.

The District Cooperative Central bank Ltd., Eluru

.. Respondent

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P. NO.14457 OF 1996

ORAL ORDER

Heard Sri V.Srinivas representing Sri V.Venkata Ramana, the learned counsel for the petitioner. When the matter is called there is no representation on behalf of the respondent-Bank.

The petitioner seeks a direction to the respondent to comply with the provision of Sec.25-H of the Industrial Disputes Act,1947(for short "the Act")

The petitioner asserts that the respondent-Cooperative Bank is an industry within the meaning of the expression in Sec.2(j) of the Act. The petitioner joined the service of the Bank as a temporary Attender and worked as such from 19-05-1983 to 17-04-1986. He was retrenched thereafter along with temporary and N.M.R employees. The petitioner alleges that the other temporary and N.M.R staff, who were retrenched along with the petitioner in 1986, were taken back and continued in service. Such employees are stated to have filed W.P.No.15171 of 1989 seeking regularization. The petitioner asserts that the said writ petition was allowed by this Court and the respondent-Bank has however filed an Appeal against the judgment of the learned single Judge. However, according to the petitioner, all the petitioners in that writ petition were continued in service. The petitioner also states that one J.Subbarayudu who worked as N.M.R clerk some time had filed W.P.No.1519 of 1993 and consequent on the direction in that writ petition he was taken

back into service. The petitioner assets that in view of the provisions of Sec.25-H of the Act, a retrenched employee is entitled to preference for reemployment when ever a vacancy arises in the industrial establishment. The petitioner alleges that without considering his case the respondent had given appointments to raw outsiders whose names are mentioned in para.3. The above is the broad gravamen of the assertions and allegations of the writ petitioner.

On behalf of the respondent a counter-affidavit is filed by the General Manager. It is stated that the petitioner was engaged on N.M.R basis, as a peon, on a daily wage from 19-05-1983, as and when there was necessity for his service. It is also asserted that N.M.R employees whose services were dispensed with were not taken back into service. Responding to the specific averments in the writ petition, the answering respondent states that the petitioner, contrary to his assertions was not continuously employed from 19-05-1983 to 17-01-1986 without a break. He was employed merely on daily wage basis as and when necessary. It is also asserted that Sarvasri J.Subbarayudu, G.Surya Vani, K.D.L.V.Prasad, J.Arunachalam Naidu were also engaged on temporary basis on daily wages but were continued in service in view of the directions of this Court in the writ petition filed by them. With regard to Sri S.Y.Ramakrishna the counter asserts that he was reinstated into service as an N.M.R/Attender as per the directions of the Assistant Commissioner of Labour, Eluru in A.P.S.E.Case No.1 of 1992 pending final orders of this Court in writ petition No.6024 of 1996. The respondent asserts that there are no vacancies as per the sanctioned strength of the Bank to enable employment of the petitioner particularly as there was no necessity for the service of an Attender.

The assertions in the counter-affidavit have not been rebutted. The respondent-Bank asserts clearly that certain persons whose names are specified in the writ petition were temporary employees disengaged for want of work but were reinstated/taken back to service on the basis of interim directions of this Court and not volitionally by the respondent-Bank. Such a conduct of the respondent-Bank, obligated by interim orders of this Court does not constitute a conduct of the employer inviting an obligation to the provisions of Sec.25-H of the Act. Only when there is a necessity for recruitment of a person even temporarily or on daily wage basis and an employer desires to make such temporary appointment do the provisions of Sec.25-H of the Act come into play and obligate consideration of a person earlier retrenched for want of vacancies. On facts no case is made out for grant of relief to the petitioner.

The writ petition is devoid of merits and is accordingly dismissed. In the circumstances no order as to costs.

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GODA RAGHURAM,J

12th DECEMBER 22006
***TSNR**